



Recommendation 71-8

Modification and Dissolution of Orders and Injunctions

(Adopted December 7, 1971)

Cease-and-desist orders issued by administrative agencies and injunctions obtained by administrative agencies from the federal courts in the enforcement of regulatory statutes have generally been permanent in duration. As a result of this practice, many orders and injunctions now outstanding are decades old. Such outstanding orders and injunctions may serve no useful purpose and often cause inconvenience and hardship to the respondents. A number of agencies have experimented successfully with techniques for limiting the duration of certain types of orders and injunctions to a set period of time, but this approach is not appropriate in many circumstances. To deal with this situation agencies should therefore have available procedures whereby respondents may seek modification or dissolution of outstanding orders and injunctions.

Recommendation

A. Agency Cease-and-Desist Orders

Each federal agency that issues a significant number of cease-and-desist orders over which it retains jurisdiction should have a procedure available whereby a respondent may request the agency to modify or vacate a cease-and-desist order that has become final. The factors considered by the agency in ruling upon such a request should include: The period of time the order has been in effect; changed conditions of fact or law during that period; the respondent's compliance with the order; the likelihood of further violations of the order; the hardship which the order imposes on the respondent; the extent of the respondent's compliance with requirements of law that are related to those covered by the order; the interests of other persons or parties affected by the order; the importance of the order to the agency's overall enforcement program; and the public interest in the enforcement of the law.

B. Court-Enforced Orders

Each federal agency that obtains a significant number of injunctions in the federal courts or issues a significant number of cease-and-desist orders which are enforced by federal courts



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that retain by statute exclusive jurisdiction over the orders should have a procedure available whereby a respondent may request the agency to join or concur with it in moving the court to modify or vacate such an injunction or order or, in the case of an order issued by the agency, to remand the proceeding to the agency for that purpose. The factors considered by the agency in acting upon such a request should include those stated in paragraph A.

Citations:

38 FR 19790 (July 23, 1973)

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